

REMARKS

The rejection of claim 1 under 35 USC §112, second paragraph, is deemed overcome by the deletion of the "of the type" language along with the other non-limiting claim changes.

The rejections of claim 1 as being anticipated by Furukawa et al. under 35 USC §102(e) and as obvious over Heckler IV in view of Furukawa et al. under 35 USC §103(a) are traversed, and reconsideration of each rejection is respectfully requested.

Initially, applicant submits that the two rejections are both legally and logically inconsistent. If, as the Office Action contends, the Furukawa et al. teachings meet the terms of claim 1, then the Heckler IV teachings are unnecessary and irrelevant. Indeed, accepting the assertions as to the §102(e) rejection as accurate (which they are not), it is inconceivable that the Heckler IV patent would be necessary. This is not a case of alternative rejections but of internally and totally inconsistent rejections.

The Furukawa et al. patent neither teaches nor suggests the claimed invention with or without the hindsight reliance on the teachings of Heckler IV. Indeed, the Furukawa et al. patent, unlike either the present invention or, for that matter, the Heckler IV patent, is not directed to food packaging and the

problems attendant thereto. Instead, the Furukawa et al. patent deals with the venting, not the aeration, of a container whose content generate oxygen, e.g., bleaches. In other words, Furukawa et al. were trying to get oxygen out of the container rather than into the container. That is, the Furukawa et al. patent has nothing in common with the problems addressed by the present invention and the manner on which these problems have been solved. The same could be said about the lack of relationship between the Furukawa et al. and Heckler IV patents. For example, the Furukawa et al. venting container contains very large holes that are covered by a venting layer constructed to vent O₂ out of the container. Neither the aperture sizes nor the venting layer material is designed for internal aeration, i.e., allowing air to enter the packaging. The venting layer 14 on the Furukawa et al. works in reverse.

One of ordinary skill in the art looking to solve the problems of food transpiration would never have looked to the Heckler IV patent teachings as those teachings appear to relate to non-food products. In this connection, attention is directed to the list of particulate goods at col. 6, lines 61 *et seq.* of the Heckler IV patent. In addition, nothing is said in that patent about gas generation by any of the listed contents. The asserted motivation for the alleged combination of Furukawa et al. and Heckler IV is thus seen to be based upon impermissible hindsight and, in any event, would not result in a packaging structure that provides for food transpiration.

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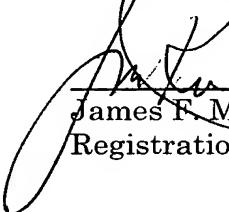
Accordingly, early and favorable action is earnestly solicited.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #100719.52887US).

Respectfully submitted,

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